



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2021-0393; FRL-9756-01-R10]

Air Plan Approval; OR; Vehicle Inspection Program and Medford-Ashland PM₁₀

Maintenance Plan Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Oregon state implementation plan (SIP) submitted by the State of Oregon (Oregon) on December 9, 2020 and December 22, 2021. The revisions update the SIP-approved vehicle inspection program for the Portland and Medford areas. The EPA is proposing to approve the SIP submittal as consistent with Clean Air Act (Act or CAA) requirements. Additionally, EPA is proposing to make a technical correction to the Medford-Ashland particulate matter (PM₁₀) maintenance plan that incorrectly identified a street-sweeping commitment as a transportation control measure (TCM).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2021-0393, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or

comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, (206) 553-6121, *vauepl.claudia@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to EPA.

I. Background for this Action

Section 110 of the CAA requires states to develop and submit to the EPA SIPs to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). Each federally approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA-approved SIP provisions and control strategies are federally enforceable. States revise the SIP as needed and submit revisions to the EPA for review and approval.

II. The State’s Submittal

On December 9, 2020 and December 22, 2021, Oregon submitted a SIP revision for the vehicle inspection program (VIP) in the Portland and Medford areas. Table 1 of this document lists the rule revisions included in the scope of the state’s submissions. The SIP revision updates the rules to improve clarity, add requirements for the onboard diagnostics system, and remove references to the enhanced dynamometer test that is no longer required as of January 1, 2007.¹

Table 1. Rule revisions included in Oregon’s VIP SIP submission, effective November 19, 2020.

¹ EPA approved phasing out the enhanced test on December 19, 2011. (*See* 76 FR 78571).

| Rule Number OAR 340- | Rule Title |
|---------------------------------|--|
| 256-0010 | Definitions |
| 256-0130 | Visible Emissions: Motor Vehicle Fleet Operation |
| 256-0200 | Certification of Pollution Control Systems: County Designations |
| 256-0300 | Emission Control System Inspection: Scope |
| 256-0310 | Emission Control System Inspection: Government-Owned Vehicle, Permanent Fleet Vehicle and United States Government Vehicle Testing Requirements |
| 256-0330 | Emission Control System Inspection: Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program |
| 256-0340 | Emission Control System Inspection: Light Duty Motor Vehicle and Heavy Duty Gasoline Motor Vehicle Emission Control Test Method for Basic Program |
| 256-0350 (repeal) | Emission Control System Inspection: Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program |
| 256-0355 | Emission Control System Inspection: Emissions Control Test Method for OBD Test Program |
| 256-0356 | Emission Control System Inspection: Emissions Control Test Method for On-Site Vehicle Testing for Automobile Dealerships |
| 256-0370 | Emission Control System Inspection: Renewal of Registration for Light Duty Motor Vehicles and Heavy Duty Gasoline Motor Vehicles Temporarily Operating Outside of Oregon |
| 256-0380 | Emission Control System Inspection: Light Duty Motor Vehicle Emission Control Test Criteria for Basic Program |
| 256-0390 | Emission Control System Inspection: Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria |
| 256-0400 | Emission Control System Inspection: Light Duty Motor Vehicle Emission Control Standards for Basic Program |
| 256-0410 (repeal) | Emission Control System Inspection: Light Duty Motor Vehicle Emission Control Standards for Enhanced Program |
| 256-0420 | Emission Control System Inspection: Heavy-Duty Gasoline Motor Vehicle Emission Control Standards |
| 256-0440 | Emission Control System Inspection: Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates |
| 256-0450 | Emission Control System Inspection: Gas Analytical System Licensing Criteria for Basic Program |
| 256-0460 (repeal) | Emission Control System Inspection: Gas Analytical System Licensing Criteria for Enhanced Program |
| 256-0465 | Emission Control System Inspection: Test Equipment Licensing Criteria for OBD Test Program |
| 256-0470 | Emission Control System Inspection: Agreement With Independent Contractor; Qualifications of Contractor; Agreement Provisions |

III. EPA's Evaluation

VIP Rule Revisions

Oregon's submission amends language in the VIP definitions (OAR 340-256-0010) to improve clarity, including removing definitions that are no longer needed (crankcase emissions, electric vehicle, enhanced test, GPM, Medford-Ashland Air Quality Maintenance Area (AQMA), motorcycle, noise level, oxides of nitrogen, Portland Vehicle Inspection Area, propulsion exhaust noise, two-stroke cycle engine) and adding new definitions (emissions franchised, HC, imported vehicle, permanent fleet vehicle, vehicle identification number). The submission also provides clarifying language in the provision for visible emissions of motor vehicle fleet operation (OAR 340-256-0130), the certification of pollution control systems (OAR 340-256-0200), and several provisions for the emission control system inspection (OAR 340-256-0300, -0310, -0330, -0356, -0370, -0380, -0390, -0450, -0465, -0470).²

In addition to improving clarity in the emission control system inspection scope (OAR 340-256-0300), the submission removes references to the enhanced dynamometer test and adds requirements for the onboard diagnostics system (OAR 340-256-0340, -0355, -0400, -0420, -0440). EPA approved phasing out Oregon's enhanced dynamometer test on December 19, 2011 (76 FR 78571). The action proposed will update the regulations in the federally approved SIP to be consistent with EPA's 2011 approval of the phase out of specified VIP requirements.

Oregon's submission also repealed three emission control system inspection provisions that were approved into the SIP (OAR-340-256-0350, -0410, -0460). These provisions provided requirements for the enhanced test program that was no longer

² In a December 22, 2021 letter to EPA (supplemental submission), Oregon requested that OAR 340-256-0100 be deleted from the scope of the December 9, 2020 submission. DEQ intends to re-submit that provision in a future SIP submission.

required as of January 1, 2007.

Medford-Ashland Technical Correction

EPA is proposing to make a technical correction concerning the naming convention of a Jackson County street sweeping commitment for the Oregon, Medford-Ashland maintenance area. The street sweeping commitment was included in the Medford-Ashland Particulate Matter (PM₁₀) Maintenance Plan (Medford-Ashland SIP) adopted by the Oregon Environmental Quality Commission on December 10, 2004 and submitted to EPA on March 10, 2005. Oregon incorrectly identified the street sweeping commitment in the Medford-Ashland SIP as a “Transportation Control Measure” (TCM) and on June 19, 2006, EPA took a direct final action to approve the Medford-Ashland SIP including the street sweeping commitment as a TCM (71 FR 35163). EPA erred in describing the street sweeping commitment as a TCM.

A TCM is defined at 40 CFR 93.101 as “any measure that is specifically identified and committed to in the applicable implementation plan... that is either one of the types listed in CAA section 108, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.” Although the street sweeping commitment was included in the Medford-Ashland SIP, it clearly does not meet the regulatory definition of a TCM because road cleaning measures do not reduce vehicle use or change traffic flow or congestion conditions nor is it one of the types of TCMs listed in CAA section 108.

Because the street sweeping commitment was erroneously identified as a TCM, the EPA proposes to correct the nomenclature used to describe the measure and clarify that the street sweeping commitment in the Medford-Ashland SIP is not a TCM, within the meaning of 40 CFR 93.101, upon final action on this proposal. The EPA notes that the Medford-Ashland SIP was never required to include TCMs because former PM₁₀

non-attainment areas are not required to include TCMs. This action, thus, clarifies that Oregon is not obliged to treat the street sweeping commitment in its SIP as a TCM.

IV. Proposed Action

EPA is proposing to approve the SIP revision submitted by Oregon on December 9, 2020 and December 22, 2021. EPA is also proposing to correct the nomenclature in the Medford-Ashland PM₁₀ maintenance plan used to describe the street sweeping control measure as a TCM.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in Section III of this preamble. Also, in this document, the EPA is proposing to remove, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to remove the incorporation by reference of OAR-340-256-0350, -0410, -0460 as described in Section III of this preamble. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those already imposed by state law. For that reason, this

action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In

those areas of Indian country, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

(Authority: 42 U.S.C. 7401 *et seq.*)

Dated: May 4, 2022.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

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